



SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA-2021-0017]

RIN 0960-AI59

Removing the Waiting Period for Entitlement to Social Security Disability

Insurance Benefits for Individuals with Amyotrophic Lateral Sclerosis

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: In accordance with the ALS Disability Insurance Access Act of 2019, as amended, this final rule eliminates the 5-month waiting period for the Social Security Disability Insurance (SSDI) program for individuals with amyotrophic lateral sclerosis (ALS) who were approved for SSDI benefits on or after July 23, 2020.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Director, Office of Vocational, Evaluation and Process Policy, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-4794. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

Under the SSDI program, individuals who have been found to be disabled are subject to a 5-month waiting period before they are entitled to their first payment. The

waiting period begins with the first full month the individual meets all the eligibility factors covered by the application and ends 5 months after that date. Subject to some exceptions, the disabled individual is entitled to begin receiving payments beginning with the first full calendar month after the waiting period in which all other requirements are met.¹

The waiting period cannot begin more than 17 months before the month in which the individual files an application for SSDI and meets the disability insured status requirements.² As an example, consider an individual whose disability began on April 2, 2020, based on an application for SSDI benefits filed on May 2, 2020. If approved for SSDI, the individual's 5-month waiting period would begin in May 2020 and end in September 2020, and the individual would be entitled to benefits beginning with October 2020 (that is, the first full month after completion of the waiting period).

On December 22, 2020, the President signed into law the ALS Disability Insurance Access Act of 2019 (ALS Act),³ and on March 23, 2021, the President signed into law an act to make a technical correction to the ALS Act.⁴ Commonly known as Lou Gehrig's disease, ALS is a progressive neurodegenerative disease that affects nerve cells in the brain and spinal cord. There is no known cure for ALS.⁵ Before the enactment of the ALS Act, individuals with ALS were subject to the 5-month waiting period for receiving SSDI benefits. The ALS Act eliminated the 5-month waiting period for individuals who have been medically determined to have ALS.

The ALS Act originally applied to individuals with ALS who filed an application for SSDI benefits on or after December 23, 2020.⁶ The technical correction to the ALS

¹ Section 223(c)(2) of the Social Security Act; 20 CFR 404.315(a)(4).

² *Id.*

³ Pub. L. 116-250, 134 Stat. 1128, available at <https://www.congress.gov/bill/116th-congress/senate-bill/578>.

⁴ Pub. L. 117-3, 135 Stat. 246, available at <https://www.congress.gov/bill/117th-congress/senate-bill/579>.

⁵ 166 Cong. Rec. H6988, December 8, 2020, <https://www.congress.gov/congressional-record/volume-166/house-section/page/H6988-6991>.

⁶ Section 2(b) of the ALS Act, Pub. L. 116-250, 134 Stat. at 1128.

Act amended the effective date of the law. Under the technical correction, the elimination of the 5-month waiting period applies to individuals with ALS whose applications for SSDI benefits were approved after the date that is 5 months before the date of enactment of the ALS Act on December 22, 2020. In practical terms, this means the elimination of the 5-month waiting period applies to individuals with ALS whose applications for SSDI benefits were approved on or after July 23, 2020.

Explanation of Changes

To ensure our regulations reflect the provisions of the ALS Act, as amended, we have added language in 20 CFR 404.315 to eliminate the 5-month waiting period for individuals with ALS whose applications for SSDI benefits were approved on or after July 23, 2020. We also added language to 20 CFR 404.317 to reflect this change in the law due to the ALS Act. We are making no other changes to our regulations.

REGULATORY PROCEDURES

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(A)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to the notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We find that there is good cause under 5 U.S.C. 553(b)(B) to issue this regulatory change as a final rule without prior public comment. We find that prior public comment is unnecessary because this final rule merely makes our regulations (20 CFR 404.315 and 404.317) consistent with the provisions of the ALS Act, as amended, which eliminated the 5-month waiting period for individuals with ALS whose applications for DI benefits were approved on or after July 23, 2020. Because we are only making our regulations

consistent with the ALS Act, and we are making no other changes, we find that prior public comment is unnecessary and that there is good cause to issue this final rule without prior notice and public comment.

In addition, we find that there is good cause for dispensing with the 30-day delay in the effective date of this final rule as provided by 5 U.S.C. 553(d)(3). As we explained above, this final rule merely makes our regulations consistent with the ALS Act, which is already in effect. Therefore, we find that it is unnecessary to delay the effective date of the final rule.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866, as supplemented by E.O. 13563. Thus, OMB did not review the final rule. We also determined that this final rule meets the plain language requirement of E.O. 12866.

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by E.O. 13132 and determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this final rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities, because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule only removes the 5-month waiting period in the regulations cited above but does not create any new or affect any existing collections. So, it does not impose any burdens under the Paperwork Reduction Act and does not require further OMB approval.

(Catalog of Federal Domestic Assistance Program Nos. 9601, Social Security – Disability Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Disability benefits, Old-age, survivors, and disability insurance, Reporting and recordkeeping requirements, Social security.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to William P. Gibson, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

William P. Gibson,
Federal Register Liaison,
Office of Legislation and Congressional Affairs,
Social Security Administration.

For the reasons stated in the preamble, we amend 20 CFR part 404, subpart D, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY

INSURANCE (1950-)

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits;

Period of Disability

1. The authority citation for subpart D of part 404 continues to read as follows:

AUTHORITY: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, and 702(a)(5) of the

Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, and 902(a)(5)).

2. Amend §404.315 by revising paragraph (a)(4) to read as follows:

§ 404.315 Who is entitled to disability benefits?

(a) * * *

(4) You have been disabled for 5 full consecutive months or no waiting period is required. The 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if:

(i) You were previously entitled to disability benefits or to a period of disability under § 404.320 any time within 5 years of the month you again became disabled; or

(ii) You have been medically determined to have amyotrophic lateral sclerosis, and we approved your application for disability insurance benefits on or after July 23, 2020.

* * * * *

3. Amend §404.317 by adding a sentence after the third sentence to read as follows:

§ 404.317 How is the amount of my disability benefit calculated?

* * * If the 5-month waiting period is not required because you have been medically determined to have amyotrophic lateral sclerosis (see § 404.315), your PIA is figured as if you were 62 years old when you become entitled to benefits. * * *